

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-960

JAMES B. COLLINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION TO ADD TO
PETITION FOR CERTIORARI

James L. Brandenburg
407 Seventh Street, N.W.
Albuquerque, N.M. 87102
and
Marc Prelo
2625 Pennsylvania, N.E.
Albuquerque, N.M. 87110

Attorneys for Petitioner

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vs.

UNITED STATES OF AMERICA,

Respondent.

MOTION

Petitioner moves the Court to allow the addition of the Appendix (attached hereto) to the Petition for Certiorari filed in this cause on December 15, 1978.

Respectfully submitted,

James L. Brandenburg
407 Seventh Street, N.W.
Albuquerque, N.M. 87102

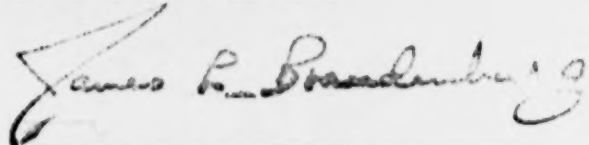
and

Marc Prelo
2625 Pennsylvania, N.E.
Albuquerque, N.M. 87110

James L. Brandenburg
By _____

Attorneys for Petitioner

I hereby certify that on this 20th day of December, 1978, a copy of the foregoing Motion was mailed to the Solicitor General, Department of Justice, Washington, D. C. 20530. All parties required to be served have been served.



James L. Brandenburg

APPENDIX

ADDITIONAL QUESTIONS PRESENTED FOR REVIEW

1. Does Rule 11, Federal Rules of Criminal Procedure, deny equal protection of the law to an accused who pleads nolo contendere, by allowing the judge to accept the plea without establishing a factual basis for it, while requiring that a factual basis be established for a guilty plea?

2. Was petitioner denied equal protection of the law when the judge failed to advise him of the elements of the charge as required by the Bench Book for United States District Judges (October, 1969) when other accused in the United States are given such advice according to the instructions in the Bench Book for United States District Judges (October, 1969).

ADDITIONAL AUTHORITIES

Hampton v. Mow Sun Wong, 426 U. S. 88, 48 L.Ed. 2d 495, 96 S.Ct. 1895 (1976).

Mathews v. DeCastro, 429 U. S. 181, 50 L.Ed. 2d 389, 97 S.Ct. 431 (1976).

NOVEMBER TERM - NOVEMBER 28, 1978

Before Honorable Oliver Seth, Chief
Judge,
Honorable Robert H. McWilliams, Circuit
Judge.

UNITED STATES OF AMERICA,)
)
 Plaintiff-Appellee,)
)
 vs.) No. 78-1093
)
JAMES B. COLLINS,)
)
 Defendant-Appellant,)

This matter comes on for consideration of the motion of appellant for a stay of the mandate of this Court, pending application to the Supreme Court of the United States for a writ of certiorari. The appellant submitted a memorandum in support of the motion.

The Court asked for the position of the United States Attorney for the District of New Mexico regarding appellant's motion and was informed that no objection would be made to the request for a stay.

Since the mandate of this Court issued November 16, 1978, the Court will treat the motion as a motion for recall of the mandate and a request for stay of the reissuance of it

pending application for writ of certiorari.

Upon consideration whereof, it is the order of the Court as follows:

1. The mandate issued pursuant to Rule 41, Federal Rules of Appellate Procedure, on November 16, 1978 to the United States District Court for the District of New Mexico is hereby recalled.

2. Reissuance of the mandate is stayed until December 28, 1978, pending certiorari, and that if on or before that date there is filed with the Clerk of the Court of Appeals a notice from the Clerk of the Supreme Court of the United States that appellant has timely filed a petition for writ of certiorari in the Supreme Court, the stay shall continue until final disposition by the Supreme Court.

s/ Howard K. Phillips
HOWARD K. PHILLIPS, Clerk